

AN ACT

relating to voting practices and elections of property owners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 209.003, Property Code, is amended by adding Subsection (e) to read as follows:

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.0058; and

(2) Section 209.00593.

SECTION 2. Chapter 209, Property Code, is amended by adding Section 209.0041 to read as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a

1 property owners' association.

2 (c) This section does not apply to a property owners'  
3 association that is subject to Chapter 552, Government Code, by  
4 application of Section 552.0036, Government Code.

5 (d) This section does not apply to the amendment of a  
6 declaration during a development period.

7 (e) This section applies to a dedicatory instrument  
8 regardless of the date on which the dedicatory instrument was  
9 created.

10 (f) This section supersedes any contrary requirement in a  
11 dedicatory instrument.

12 (g) To the extent of any conflict with another provision of  
13 this title, this section prevails.

14 (h) Except as provided by this subsection, a declaration may  
15 be amended only by a vote of 67 percent of the total votes allocated  
16 to property owners in the property owners' association, in addition  
17 to any governmental approval required by law. If the declaration  
18 contains a lower percentage, the percentage in the declaration  
19 controls.

20 (i) A bylaw may not be amended to conflict with the  
21 declaration.

22 SECTION 3. Chapter 209, Property Code, is amended by adding  
23 Sections 209.0058, 209.0059, 209.00592, 209.00593, and 209.00594  
24 to read as follows:

25 Sec. 209.0058. BALLOTS. (a) Any vote cast in an election  
26 or vote by a member of a property owners' association must be in  
27 writing and signed by the member.

1       (b) Electronic votes cast under Section 209.00593  
2 constitute written and signed ballots.

3       (c) In an association-wide election, written and signed  
4 ballots are not required for uncontested races.

5       Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a  
6 dedicatory instrument that would disqualify a property owner from  
7 voting in an association election of board members or on any matter  
8 concerning the rights or responsibilities of the owner is void.

9       (b) This section does not apply to a property owners'  
10 association that is subject to Chapter 552, Government Code, by  
11 application of Section 552.0036, Government Code.

12       Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided  
13 by Subsection (b), a provision in a dedicatory instrument that  
14 restricts a property owner's right to run for a position on the  
15 board of the property owners' association is void.

16       (b) If a board is presented with written, documented  
17 evidence from a database or other record maintained by a  
18 governmental law enforcement authority that a board member has been  
19 convicted of a felony or crime involving moral turpitude, the board  
20 member is immediately ineligible to serve on the board of the  
21 property owners' association, automatically considered removed  
22 from the board, and prohibited from future service on the board.

23       Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of  
24 an owner may be cast or given:

25           (1) in person or by proxy at a meeting of the property  
26 owners' association;

27           (2) by absentee ballot in accordance with this

1 section;

2 (3) by electronic ballot in accordance with this  
3 section; or

4 (4) by any method of representative or delegated  
5 voting provided by a dedicatory instrument.

6 (b) An absentee or electronic ballot:

7 (1) may be counted as an owner present and voting for  
8 the purpose of establishing a quorum only for items appearing on the  
9 ballot;

10 (2) may not be counted, even if properly delivered, if  
11 the owner attends any meeting to vote in person, so that any vote  
12 cast at a meeting by a property owner supersedes any vote submitted  
13 by absentee or electronic ballot previously submitted for that  
14 proposal; and

15 (3) may not be counted on the final vote of a proposal  
16 if the motion was amended at the meeting to be different from the  
17 exact language on the absentee or electronic ballot.

18 (c) A solicitation for votes by absentee ballot must  
19 include:

20 (1) an absentee ballot that contains each proposed  
21 action and provides an opportunity to vote for or against each  
22 proposed action;

23 (2) instructions for delivery of the completed  
24 absentee ballot, including the delivery location; and

25 (3) the following language: "By casting your vote via  
26 absentee ballot you will forgo the opportunity to consider and vote  
27 on any action from the floor on these proposals, if a meeting is

1 held. This means that if there are amendments to these proposals  
2 your votes will not be counted on the final vote on these measures.  
3 If you desire to retain this ability, please attend any meeting in  
4 person. You may submit an absentee ballot and later choose to  
5 attend any meeting in person, in which case any in-person vote will  
6 prevail."

7 (d) For the purposes of this section, "electronic ballot"  
8 means a ballot:

9 (1) given by:

10 (A) e-mail;

11 (B) facsimile; or

12 (C) posting on an Internet website;

13 (2) for which the identity of the property owner  
14 submitting the ballot can be confirmed; and

15 (3) for which the property owner may receive a receipt  
16 of the electronic transmission and receipt of the owner's ballot.

17 (e) If an electronic ballot is posted on an Internet  
18 website, a notice of the posting shall be sent to each owner that  
19 contains instructions on obtaining access to the posting on the  
20 website.

21 (f) This section supersedes any contrary provision in a  
22 dedicatory instrument.

23 (g) This section does not apply to a property owners'  
24 association that is subject to Chapter 552, Government Code, by  
25 application of Section 552.0036, Government Code.

26 Sec. 209.00594. TABULATION OF AND ACCESS TO BALLOTS.

27 (a) Notwithstanding any other provision of this chapter or any

1 other law, a person who is a candidate in a property owners'  
2 association election or who is otherwise the subject of an  
3 association vote, or a person related to that person within the  
4 third degree by consanguinity or affinity, as determined under  
5 Chapter 573, Government Code, may not tabulate or otherwise be  
6 given access to the ballots cast in that election or vote except as  
7 provided by this section.

8 (b) A person other than a person described by Subsection (a)  
9 may tabulate votes in an association election or vote but may not  
10 disclose to any other person how an individual voted.

11 (c) Notwithstanding any other provision of this chapter or  
12 any other law, a person other than a person who tabulates votes  
13 under Subsection (b), including a person described by Subsection  
14 (a), may be given access to the ballots cast in the election or vote  
15 only as part of a recount process authorized by law.

16 SECTION 4. Section 209.0059, Subsection (a), Section  
17 209.00592, and Section 209.00593, Property Code, as added by this  
18 Act, apply to a provision in a dedicatory instrument enacted  
19 before, on, or after the effective date of this Act.

20 SECTION 5. This Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 472 passed the Senate on March 17, 2011, by the following vote: Yeas 30, Nays 1; May 26, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2011, House granted request of the Senate; May 29, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 472 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 76, Nays 69, one present not voting; May 27, 2011, House granted request of the Senate for appointment of Conference Committee; May 29, 2011, House adopted Conference Committee Report by the following vote: Yeas 77, Nays 65, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor